

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 03/09/2004

Coram

The Hon'ble Mr. Justice P. SATHASIVAM

and

The Hon'ble Mr. Justice M. CHOCKALINGAM

Habeas Corpus Petition No. 526 of 2004

Kamalam,

W/o. Ramalingam Subramaniam,

770/C1 East Third Street,

Pudukottai.

.. Petitioner.

-Vs-

1. State of Tamil Nadu,

represented by Secretary, Public (SC)

Department, Fort St. George,

Chennai-600 009.

2. Union of India,

represented by Secretary to Government,

Ministry of Finance, Department of

Revenue, COFEPOSA Unit, New Delhi-110 001.

.. Respondents.

Petition is filed under Article 226 of the Constitution of India, for issuance of a Writ of Habeas Corpus, calling for the records of the 1st respondent connected with order in GO.No. SR.1/182-9 /2004 dated 2-3-2004, quash the same and set at liberty the detenu Ramalingam Subramanian, son of Ramalingam, now detained in Central Prison, Trichy under the provisions of Conservation of Foreign Exchange and Prevention of Smuggling Activities Act.

!For petitioner: Mr. B. Kumar, Senior counsel
for Mr. A. Anwar Ali.

^For respondents: Mr. Abudukumar Rajarathinam,
Govt. Advocate (Crl.Side)for R1.

Mrs. Vanathi Srinivasan,
ACGSC for R-2.

:ORDER

(Order of Court was delivered by P. Sathasivam, J.,)

Petitioner is the wife of the detenu who was detained under Section 3 (1) (i) of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act (in short "COFEPOSA Act") (Central Act 52 of 1974) by the impugned proceedings dated 02-03-2004. The said order came to be passed by the first respondent with a view to prevent the detenu Ramalingam Subramanian residing at No.770/C1, East Third Street, Pudukottai from smuggling goods in future.

2. Heard Mr. B. Kumar, learned senior counsel for the petitioner and Mr. Abudukumar Rajarathinam, learned Government Advocate, for first respondent as well as Mrs. Vanathi Srinivasan, learned Additional Central Government Standing counsel for second respondent.

3. After taking us through the grounds of detention and other materials, Mr. B. Kuamr, learned senior counsel, has submitted that from the materials there is no contravention of Customs Act at all to pass the order of detention. He further contended that as per the Customs Act, 1962, a passenger who brings certain goods has the right to abandon the goods thereby avoid the payment of duty and clearance of the goods, hence there cannot be an application of section 77 or section 111(d), (l) and (m). He further contended that the detaining authority has ignored and not taken into consideration the finding rendered in the order of bail granted to the detenu by the Court of Additional Chief Metropolitan Magistrate, Economic Offences, Chennai. In the light of the conclusion of the learned Magistrate, it will not amount to an offence under Section 132 or 135 of the Customs act. According to the senior counsel, the detaining authority is not alive to the factum of specific finding in the bail order, thus there is total non-application of mind on a factor which is a judicial order and it is binding on the Government. On the other hand, learned Government Advocate, after taking us through the relevant provisions of the Customs Act and COFEPOSA Act, 1974, would submit that inasmuch as the detenu was very well aware and brought out dutiable goods and liable to proceed under Section 135 (1)(b) of the Act, the detaining authority is fully justified in passing the order of detention.

4. We have carefully considered the rival submissions.

5. It is seen from the grounds of detention that on 12 -1-2004 three bags without any baggage tag were found kept in a trolley near the Conveyor belt No.4, un-attended, after all the passengers arrived by Indian Airlines flight No.1C 566 had left the arrival hall of the Anna International Terminal. Since no one came forward to claim the ownership of the same, all the three pieces of the baggage were opened and examined by the Customs Intelligence officers one by one in the presence of witnesses. The first bag found to contain one Indian Passport bearing additional booklet No. Z 1542966 issued at Singapore on 8-7-2002 to one Ramalingam Subramanian, resident of 485, Indira Nagar, II Street, Pudukottai, Tamil Nadu. Inside the passport, one Customs Declaration Card duly signed, with the particulars of Flight No. as IC 556 name as Ramalingam Subramanian, number of packages as 3, checked-in baggage as 2 and

hand baggage as 1 having been filled up, but leaving the value of the dutiable goods being imported blank was found. In another bag one Indian Airlines flight ticket No.91429 7556 6 issued in the name of Subramanian R along with Claim Tags No. SQ 177329 and SQ 177329 bearing the name of Subramanian R were also recovered. On further examination, it was found to contain 20 Nos. of Nokia Cellphones with batteries and adopters (Model No. 3100) and 3 Nos. of Pioneer Car Stereo DEH 2650. Then the multi colour Zipper bag with baggage tag No. SQ 177328 was examined in the presence of witnesses and 4 Nos. of Sony Handycam DCR TRV 228E with accessories and 9 Nos. of Pioneer Car Stereo DEH 5550 were recovered from it. Thereafter, one white coloured Martel VSOP card board carton without any baggage tag was opened in the presence of witnesses and 18 Nos. of Pioneer Car Stereo DEH 3550 were recovered from it. Since the aforesaid goods were not accompanied by any documents, the same were seized along with the baggage under a mahazar for further action under Customs Act, 1962 read with Foreign Trade (Development and Regulation) Act, 1992 on a reasonable belief that they were attempted to be smuggled into India. The said Ramalingam Subramanian was informed about the same. Pursuant to the same, he made a voluntary statement before the Intelligence Officer, Customs House, Chennai-1 on 21-01-2004 wherein it is stated that while returning from Singapore on 12-01-2004 he bought clothes and packed them in a polythene cover for his wife and his family members and reached Singapore Airport, that an un-known person approached him at Singapore Airport and introduced himself as a baggage broker and showed him three baggages and requested him to carry the same and hand over the same to a person who would identify him outside Chennai Airport, for which he would be paid 250 Singapore Dollars at Singapore Airport itself. He further stated that at Chennai Airport, after collecting his two checked-in baggages and along with his hand bag he tried to go out of the Airport, but since he did not know the contents of the three baggages given by the unknown person at Singapore Airport, he decided to abandon the same at the arrival hall of the Airport itself, that he took his clothes and came out of the Chennai Airport and left for Pudukottai. Based on the materials, he was arrested on 22-1-2004 and produced before the Additional Chief Metropolitan Magistrate, E.O.II, Egmore, Chennai and he was remanded to judicial custody till 5-2-2004. A telegram was also sent to his wife on 23 -01-2004, intimating his arrest and remand. From the available materials, the department came to the conclusion that the electronic goods in trade quantity were brought by him with his knowledge and abandoned them at the airport to evade customs duty and had rendered liable for confiscation under Section 111 (d) (l) and (m) of the Customs Act, 1962 read with Foreign Trade (Development and Regulation) Act, 1992 and for not making a true declaration to the customs authorities as required under section 77 of the Customs Act, 1962. He has committed an offence punishable under Sections 132, 135 and also rendered himself liable for penal action under section 112. The State Government from the materials after satisfying that he has indulged in smuggling goods detained him under the provisions of COFEPOSA Act, 1974 with a view to prevent him from smuggling of goods in future.

6. By drawing our attention to Section 23 (2) of the Customs Act, 1962 (hereinafter referred to as "the Act"), Mr. B. Kumar, learned senior counsel for the petitioner, submitted that the detenu is entitled to relinquish his title to the goods or abandon the same and in that event he shall not be

liable to pay the duty thereon. The relevant provision reads as under:-

"Section 23 (2) The owner of any imported goods may at any time before an order for clearance of the goods for home consumption under section 47 or an order for permitting the deposit of goods in a warehouse under section 60 has been made, relinquish his title to the goods and thereupon he shall not be liable to pay the duty thereon."

Section 47 speaks about clearance of goods for home consumption. It is seen that if the officer is satisfied that the goods entered for home consumption are not prohibited goods and the importer has paid the import duty, assessed thereon and any charges paid under the Act, the officer may pass an order permitting clearance of the goods for home consumption. Section 48 speaks about procedure in case of goods not cleared, warehoused or transhipped within 30 days after unloading. Section 77 relates to declaration by owner of baggage as under:-

"Section 77. Declaration by owner of baggage

The owner of any baggage shall, for the purpose of clearing it, make a declaration of its contents to the proper officer."

Section 80 refers to temporary detention of baggage:

"Section 80. Temporary detention of baggage

Where the baggage of a passenger contains any article which is dutiable or the import of which is prohibited and in respect of which a true declaration has been made under section 77, the proper officer may, at the request of the passenger, detain such article for the purpose of being returned to him on his leaving India and if for any reason, the passenger is not able to collect the article at the time of his leaving India, the article may be returned to him through any other passenger authorised by him and leaving India or as cargo consigned in his name."

Section 111 speaks about confiscation of improperly imported goods, etc. Among various clauses (d) (l) and (m) are relevant. Section 113 speaks about confiscation of goods attempted to be improperly exported, etc., which we are not concerned in this case. Section 135 relates to evasion of duty or prohibitions.

"Section 135 (1) Without prejudice to any action that may be taken under this Act, if any person-

(a) is in relation to any goods in any way knowingly concerned in any fraudulent evasion or attempt at evasion of any duty chargeable thereon or of any prohibition for the time being imposed under this act or any other law for the time being in force with respect to such goods, or
(b) acquires possession of or is in any way concerned in carrying, removing, depositing, harbouring, keeping, concealing, selling or purchasing or in any other manner dealing with any goods which he knows or has reasons to believe are liable to confiscation under section 111, he shall be punishable...."

7. The analysis of the above statutory provisions make it clear that even for

human consumption if the goods imported are not prohibited goods on payment of import duty, if any, and after payment of necessary charges in respect of the same, the proper officer is empowered to pass an order permitting clearance of goods. Though sub-section (2) of Section 23 enables the owner of the imported goods to relinquish his title to save duty, the said provision is not an absolute one, but subject to other conditions. We have already referred to Section 77 of the Act which enables the owner of any baggage to make a declaration of its contents to the proper officer for the purpose of clearing the same. Though the detenu had left the said three baggages without clearing the same before the proper officer, his voluntary statement given before the officer, Customs House, Chennai-1 and the materials available from the three baggages would show that he undertook to deliver the said bags from a baggage broker at Singapore airport with an assurance that on handing over the 3 baggages to a person who would identify him outside Chennai airport, he would be paid 250 Singapore dollars at Singapore airport itself and on that understanding/assurance, he checked in all the 3 baggage along with his hand baggage. It is further seen that in the baggage it was found one Indian passport issued at Singapore on 8-7-2002 to the detenu Ramalingam Subramanian and also contained customs declaration card duly signed with particulars of flight No. as IC 556 in the name of Ramalingam Subramanian stating that number of packages as 3, checked in baggage as 2 and hand baggage as 1 having been filled up, but leaving the value of the dutiable goods being imported blank was found. Apart from the same, the baggage was found to contain several other trade materials as referred to in clause (ii) of the grounds of detention. It is also seen from the materials furnished that cases were registered against the detenu twice during 2002 for bringing goods violating Customs Act to the tune of Rs. 4 Lakhs. All the above materials show that the detenu was aware that the materials inside the baggages were trade articles entrusted by a baggage broker at Singapore to be handed over to a person at Chennai Airport. Though the above articles are not prohibited one, the same are dutiable and in the event of nonpayment of duty, the same are liable for confiscation under Section 111 (d) (l) and (m) of the Customs Act, 1962 read with Foreign Trade (Development and Regulation) Act, 1992 and for not making a true declaration to the customs authorities as required under Section 77 of the Act.

8. The relevant provisions referred to above also show that the procedure for customs clearance applied for goods for human consumption under a bill of entry and passengers accompanied baggage need to be necessarily declared to the customs properly though an option to clear or not on payment of duty is available to the passengers. In other words, as rightly argued by the learned Government Advocate, a passenger cannot abandon the goods as a matter of right and leave the Airport without informing or declaring to the customs. As observed earlier, though the goods are not prohibited, they were not any trade quantity and were seized by the Customs Officers for nondeclaration. As stated earlier, in the statement given by the detenu on 21-01-2004, he had categorically stated that he brought 3 baggages given by a broker at Singapore Airport, abandoned them at Chennai Airport along with his passport and that he did not pay any customs duty. From the materials, we are of the view that the detaining authority is right in holding that the electronic goods in trade quantity were brought by the detenu with his knowledge and abandoned them at

the Airport to evade customs duty; hence the contrary contentions raised are liable to be rejected. The claim that no material was shown to show that there is no contravention of Customs Act and to pass an order of detention cannot be accepted; accordingly we reject the first contention.

9. Coming to the second contention, namely, nonconsideration of the finding in the bail order passed by the Additional Chief Metropolitan Magistrate, Economic Offences-II, Chennai, we have perused the bail order dated 11-02-2004. First of all, the said order is not with reference to any adjudication proceedings, but it relates to the claim of the accused whether he is entitled for bail or not. In the said application, the learned Additional Chief Metropolitan Magistrate has rendered a finding to the effect that the accused had never mis-declared the goods or nature of goods or nature of valuation. Further, on the premise when the accused did not declare the value of the goods brought by them, the question of valuation of goods in the R.R is not sustainable, he granted bail in favour of the accused. The learned Judge has also relied on a judgement of the Bombay High Court in State of Maharashtra vs. Anil Bhagchand Jain, reported in 1990 (47) 250 (Bombay) which is also not applicable to the case on hand. We have already observed about the voluntary statement of the detenu before the officers of the Customs Department regarding receipt of 3 baggages from a baggage broker at Singapore to be delivered to a person at Chennai Airport. We also observed that the detenu was aware of the fact that he carried dutiable goods and in the event of non-declaration/non-payment of duty, the goods are liable for confiscation. In such a circumstance, the finding rendered in the order of bail granted to the detenu is not supported by legal authority and it is not incumbent on the part of the detaining authority to consider the same while passing the order of detention. Further, it is also relevant to note that before the learned Additional Chief Metropolitan Magistrate it was stated that the detenu did not know the details of the goods available in the baggages. The learned Judge has also observed that after collecting two checked up baggages and hand bag, the detenu left the airport because nobody has approached him at the airport for receiving the 3 baggages which were given by the unknown person at Singapore. However, as rightly pointed out in his representation dated 31-01-2004 he had stated that on 12-01-2004 he arrived at Chennai airport by flight IC 556 and due to continuous stomach pain he was forced to abandon his baggage at airport and he left the airport. He had also stated that out of the items listed by the officers as his goods few items did not belong to him and other items were over valued and requested for revaluation. For this, the Customs Department in their reply dated 12-02-2004 had stated that the entire goods were recovered from his baggage only and that the values adopted are in tune with the valuation adopted for same models during the period in Chennai and other Airports. In such a circumstance, we are of the view that the detaining authority has not committed any error in not considering the finding rendered by the learned Additional Chief Metropolitan Magistrate while granting bail in favour of the detenu.

10. From the materials placed, the detaining authority is right in arriving at a conclusion that the electronic goods in trade quantity were brought by the detenu with his knowledge and abandoned them at the airport to evade Customs Duty. We also satisfied that the detaining authority has not violated

any of the statutory provisions while passing the order of detention. It is also brought to our notice that the representation of the detenu's wife dated 16-3-2004 was also properly considered and disposed of on 29-3-2004. We are satisfied that in the light of the four Government holidays, the representation was properly considered and disposed of within 9 days and there was no delay in considering the same. The department has also explained that the value adopted by the Customs are in tune with the valuation adopted for the same models during the period in Chennai and other Airports.

11. Under these circumstances, we do not find any valid ground for interference; accordingly the petition fails and the same is dismissed.

R.B.

Index : Yes.

Internet: Yes.

To:-

1. The Secretary to Government,
Public (SC) Department, Fort St. George,
Chennai-600 009.

2. The Secretary to Union of India,
Ministry of Finance, Department of
Revenue, COFEPOSA Unit, New Delhi-110 001.

3. The Public Prosecutor, High Court, Madras.

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